Rules on Affiliation and Limitation of Subcontracting

HQ AFSPC/LGCM
Peterson AFB
as of 25 Sept 2001

Agenda

- ***Purpose***
- **Overview**
- **Why Are There Rules**
- **Affiliation**
- **Limitation of Subcontracting**
- **Summary and Q&A**

Purpose

To insure that small business offerors are aware of SBA rules on *affiliation* and *limitation of subcontracting* that affect the small business's eligibility for contract award.

Overview

Affiliation

- **Why does affiliation matter?**
- **What is affiliation?**
- **When does affiliation have consequences?**
- **What are SBA's exclusions from affiliation rules?**

Limitation of subcontracting

- **What are the limits?**
- **Who must perform the minimum?**

Why Does the SBA Have Rules?

- **To keep integrity in the small business program**
- **So “true” small business receive benefits of small business program**
- **To prevent “fronts”**

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Affiliation--First, Some Reminders

- **Prime/subcontractor relationship <u>not</u> synonymous with affiliation**
- **Affiliation & limitation of subcontracting are *<u>separate</u>* issues**
  - **<u>Affiliation</u> is how business relationships can affect the SB standing of a SB firm**
  - **<u>Limits on subcontracting</u> affect how much a SB can subcontract**
- **Both issues are relevant only if the prime contractor has to be “small” to be eligible for award**

What is Affiliation?

Business relationships--3 kinds

1. Prime-subcontractor relationship that is not "arms length"
   - "Ostensible Subcontractor Rule"
   - SBA determination
   - Seven point test
     - Contract management
     - Expertise
     - Marketing
     - Degree of collaboration on proposal writing
     - Relative amount of work for each
     - Discrete tasks subcontracted or work commingled?
     - Who has complex tasks & costly functions?

What is Affiliation? (con't)

2. Formal joint venture

3. Business relationships not directly related to an individual contract can cause affiliation

- **Power & ability to control**

Consequences of Affiliation

When affiliations are NOT excluded from rules:

- **SBA adds average annual receipts or numbers of employees of firms involved**

Example

- **SBSA, Value=$30M, NAICS 56121, size standard $20M**
- **Firm A (prime) and Firm B (sub) affiliate**
- **Firm A's average annual receipts $10M**
- **Firm B's average annual receipts $25M**

Total $35M

- **Firm A is not "small" for this procurement because affiliation is not excluded and total exceeds $20M**

Exclusions from Affiliation Rules

- **Non-8(a) procurements:**
  - **each affiliated firm is small, and**
  - **value of procurement > ½ size standard if revenue-based, or**
  - **>$10M if employee-based**
- **8(a) competitions:**
  - **each affiliated firm is small, and**
  - **at least one 8(a) firm < ½ size standard; and**
  - **value of procurement > ½ size standard if revenue-based, or**
  - **>$10M if employee-based**
  - **SBA must approve any formal joint ventures**

Rules apply to joint venture or prime-sub team

Exclusions from Affiliation Rules (con't)

- **<u>Any procurement (incl. 8(a) sole source)</u>:**
  - **An <u>8(a) firm</u> is excluded from affiliation rules when it affiliates with a mentor firm under the SBA Mentor-Protégé Program**

- **<u>Note</u>: Affiliations with large business are never excluded except when the large business is the mentor in a SBA Mentor-Protégé Program**

Rules apply to joint venture or prime-sub team

Consequences of Affiliation

When affiliations ARE excluded from rules :

- **SBA does not add average annual receipts or numbers of employees of firms involved**

Example

- **SBSA, Value=$30M, NAICS 56121, size standard $20M**
- **Firm A (prime) and Firm B (sub) affiliate**
- **Firm A's average annual receipts $10M**
- **Firm B's average annual receipts $15M**

- **Firm A is "small" for this procurement because affiliation is excluded from rules**

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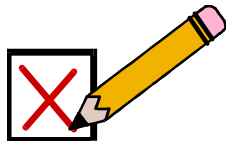

Limitation of Subcontracting

- **There are three aspects to limitations on subcontracting**
  - **What are the limits**
  - **Who has to perform the minimum**
  - **What is the time period to perform the minimum**
- **Standard FAR clauses have not been revised to “catch up” to new CFR rules but CO will interpret the clauses as described in these charts**

Limitation of Subcontracting

What is the minimum for retention?

Services	**Supplies**
50% of personnel costs	**50% of cost of manufacturing, excluding materials**
General Construction	**Special Trade Construction**
15% of cost of contract with own employees, excluding materials	**25% of cost of contract with own employees, excluding materials**

Limitation of Subcontracting

Who must perform the minimum?

- **<u>Small Business Set-Aside or 8(a) contract</u> when value of procurement < ½ size standard if revenue-based or < $10M if employee-based**
  - **SB prime by itself**

- **<u>Small Business Set-Aside or 8(a) contract</u> when value of procurement > ½ size standard if revenue-based or > $10M if employee-based**
  - **SB prime together with any 1st tier SB subs**

Limitation of Subcontracting

Who must perform the minimum (con't)?

- **HUBZone sole source, competitive or when 10% price preference is used**
  - **SB HUBZone prime together with any HUBZone subs**

- **When 10% SDB price evaluation credit is claimed**
  - **Evaluation credit only used in full and open competitions**
  - **Same rules as small bus set-aside (previous chart)**

Limitation of Subcontracting

What is the time period to perform the minimum?

- **The same time period that the Government uses to evaluate offers (it is an average)**

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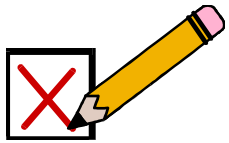

- ***Summary and Q&A***

Summary

- **Prime/subcontractor relationship not synonymous with affiliation**
- **Affiliation & limitation of subcontracting are *separate* issues**
- **Affiliation is how business relationships can affect the SB standing of a SB firm**
- **Relevant only if the prime contractor has to be “small” to be eligible for award**
- **Affiliation not often an issue**
- **Need awareness when crafting business relationships**
- **SBS can refer you to SBA specialist**

References

- **References:**
  - **13 CFR 121.103**
  - **13 CFR 124.513**
  - **13 CFR 124.519**
  - **13 CFR 124.520**
  - **13 CFR 125.6**
- **Additional Reading**
  - **“Primer on Small Business Affiliation and Limitation of Subcontracting Rules” at www.peterson.af.mil/hqafspc/contracting/ (click on “small business”)**

Microsoft Word Document

Questions?